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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 31st July 2024

S.R.O. No. 390/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award dated the 29 June 2024 passed in the I.D. Case No. 2 of 2023 [u/s 2-A(2)] by the Presiding officer, Labour Court, Bhubaneswar on the industrial dispute between the Managing Director, M/s Bharata Financial Inclusion, At Mancheswar, Industrial Estate, Block-B, Sector-A, Bhubaneswar, Dist. Khurda. 2. Managing Director, M/s Bharata Financial Inclusion, 3rd Floor, My Home Tyoon, Block-A, Kundabagh Begumpct, Hyderabad, PIN-500016 and Shri Dusasan Kandi, Age-31 yrs., S/o Jogendra Kandi, At Gangopur, P.O. Udayapur, P.S. Austranga, Dist. Puri, Odisha is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 2 of 2023 [u/s 2-A(2)]

Dated the 29th June 2024

Present :

Smt. Aparna Mohapatra,
Presiding Officer,
Labour Court, Bhubaneswar,
[JO CODE-OD-0408]

Between :

1. Managing Director,
   M/s Bharata Financial Inclusion,
   At Mancheswar, Industrial Estate,
   Block-B, Sector-A, Bhubaneswar,
   Dist. Khurda.

2. Managing Director,
   M/s Bharata Financial Inclusion,
   3rd Floor, My Home Tyoon,
   Block-A, Kundabagh Begumpct,
   Hyderabad, PIN-500016.

. . First Party-Management

And

Shri Dusasan Kandi, aged about 31 yers., . . Second Party-Workman
S/o Jogendra Kandi,
At Gangopur, P.O. Udayapur,
P.S. Austranga, Dist. Puri,
Odisha.

Appearance :

Shri B. M. Pattanaik & Associate, . . For the Management
Advocates.

Shri N. M. Mekap, . . For the 2nd Party
Authorised Representative

AWARD

Challenging his termination from service with effect from the 5th February 2022 as illegal, the second party named above has preferred the present application resorting to the provisions of Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') thereby claiming for his reinstatement in service with full back wages and all other consequential service benifits.

The case of the second party involved in the present proceeding, in short, is that-on being selected through a test, the second party joined under the managements as Loan Officer-Member Service-Retail Business Loans and he was subsequntly promoted to the post of Branch Credit Manager. In this way, he has worked under the managements for the period from 21st September 2020 to 4th February 2022. He was getting Rs. 17,000 towards his monthly wages. Although he was designated as above, but in fact, the work done by him during his service tenure was of a Class-III employee. According to the second party, he has not committed any misconduct while working under the managements. It is the claim of the second party that he has been terminated from service with effect from the 5th February 2022 on the ground of his absence in duty from 18th November 2021 to 1st December 2021 owing to his illness. In this connection, it is stated by the second party that there was no rule of the managements to submit leave application. However, the managements were fully aware about his treatment in different medicals. According to the second party he has completed more than 240 days continuous employment in twelve calendar months under the management, but the managements have neither complied the provisions enumerated in the I.D. Act nor followed the principle of natural justice while putting his service under it to an end. The second party thereafter raised an industrial dispute in respect of his termination from service before the concerned labour machinery vide his complaint petition dated the 11th November 2022 for his intervention. But, as the dispute could not be resolved by the labour machinery within the stipulated period of forty five days, he filed the present application under Section 2-A(2) of the 10 Act before this Court directly for adjudication.

3. Pursuant to the notices of this Court, the managements entered their appearance and filed a joint written statement as well as thereby admitting the employment of the second party under them as a Loan Officer-Member Service Retail Busines Loans with effect from the 21st September 2020. But, while disputing the averments made in Para. 6 of the claim statement, it is emphatically averred in the WS that the second party was remained absent unauthorisedly for the period from 18th November 2021 to 1st December 2021, but he was under treatment only for three days at Capital Hospital, Bhubaneswar as an outdoor patient. The second party thereafter not only reported in his duty on 2nd December 2021 but also submitted a leave application for sanction/ regularisation of his service period. But surprisingly, he himself sanctioned/regularised his service

by using the ID and password of the Branch Manager on theft when he was not authorised to do so. The first party by considering such act of the second party as gross misconduct issued charge sheet against him and pursuant thereto, he also filed his explanation. Consequent upon which the first party conducted, an enquiry against him by appointing an Enquiry Officer, namely Debadatta Swain for the purpose and ultimately a termination letter was issued against him on 5th February 2022 as he was found guilty as per the Enquiry Report submitted by the E.O. on 16th January 2022. With the above assertions, it has been prayed for the rejection of the claim of the second party.

4. The second party in his rejoinder to the WS while reiterating the assertions made earlier in his claim statement categorically submitted that he has never stolen the password and I.D. of any Branch Manager as alleged, rather as per the instruction of the Head of the managements he regularised his attendance. He however admitted to have received the show cause issued against him by the management. But, the 1st party without framing any charges against him had conducted an enquiry against him on 16th January 2022.

5. In view of the pleadings of the parties the following issues are framed :-

ISSUES

(i) Whether the action of the managements in dismissing the second party from his service with effect from the 5th February 2022/ 22nd March 2023 is legal and/or justified ?

(ii) Whether any due enquiry was conducted against the second party resulting his dismissal from service?

(iii) If not, what relief the second party is entitled to *?"*

6. The second party in order to substantiate his case has examined himself as WW No.1 and exhibited certain documents under Exts.1 to 4.

The managements, on the other hand, have examined two numbers of witnesses as MW Nos.1 & 2 and also placed reliance on six numbers of documents which are marked as Exts. A to F.

7. Although from the pleadings and evidence of the parties it is revealed that the present case is a case of dismissal of service of the second party preceded by a domestic inquiry, but neither the second party nor the managements pleaded to decide the fairness of such inquiry as a preliminary issue nor prayed to prove the charges on merit by adducing independent evidence in the event the inquiry is held to be unfair. Therefore, this Court took up all the issues together for adjudication.

FINDINGS

8. *Issue Nos. (i) and (ii)*—The crux of the dispute since thoroughly rests on the above issues the same are taken up together for a common discussion.

At the threshold, it is worthwhile to refer the admitted facts of the parties in this case. There is no serious dispute to the fact that the second party was appointed as 'Loan Officer-Member Services-Retail' by the authority concerned of the managements with effect from the 21st September 2020 vide Ext. 1; the second party has worked under the management effect from the 21st September 2020 and he has worked under the managements for 240 days in each calendar year. The managements have also not disputed the assertion of the second party that he is a workman and the establishment of the managements is an 'industry' as per provisions of the I.D. Act. However, the second party invited the attention of the Court to the cross-examination of MW No.1, who during his cross-examination testified that the nature of the second party was coming under the Class-III Employee.

In the case in hand, since beginning it has been contended on behalf of the second party that he was terminated from service with effect from the 5th February 2022 by virtue of Ext. 2, but the contents of Ext. 2 speak otherwise and make it clear that he was dismissed from his service with effect from the 22nd March 2023 preceded by an enquiry conducted against him. It is forthcoming from the materials available on the case record that the second party was dismissed from his service vide Ext. 2/Ext. F as he himself regularised/approved his three days absence/ leave period by using the password and ID of the Branch Manager in the web portal when he was not authorised to do so. Admittedly, for such act of the second party he was issued with show cause notice 16th December 2021, vide Ext. B to which he submitted his reply vide Ext. D and the same has been marked with objection. But, the second party during his cross-examination at Para. 17 lucidly admitted that he was called for explanation by the BM for using the password for regularisation of his attendance and that he has also given his reply on 15th January 2022. It is also forthcoming from the materials available on the case record that the managements not only conducted an enquiry against him for his above act but also dismissed him from service w.ef. 22nd April 2023 after he found him guilty as per the enquiry report submitted by the E.O. On this aspect, the second party put forth a claim that the said enquiry conducted against him us illegal.

In the above premises, a pertinent question that arises for consideration as to whether the enquiry was conducted against the second party in a fair manner so also in consonance with the principles of natural justice. Admittedly, there is nothing on record evidencing that the managements have conducted the above enquiry against the second party as per the principles laid down by the Hon'ble Apex Court in the Case of Sur Enamel and Stamping Work *v.* Workmen, AIR 1963 (SC) 1914. However, it is pertinent to mention here that not a single scrap of paper has been filed on behalf of the managements to show that at any point time before the commencement of enquiry the second party was charge sheeted; he was supplied with the relevant documents towards charges levelled, if any against him; he was issued with the documents regarding appointment of E.O., so also the representative of the managmenents ; the E.O. has maintained the enquiry proceeding file which it could have been found that the second party was intimated about the procedure of conducting the enquiry, the second party was issued with the enquiry report coupled with the supportive documents etc. The MW No. 2, who is none other than the E.O., admittedly has not recorded the statement of the disputant during enquiry. He also admitted that the copy of enquiry report was not supplied to the delinquent. On the above grounds, the enquiry conducted against the second party is held as neither legal nor justified. However, while taking into consideration the document marked vide Ext. D (the Xerox copy of reply dated the 15th January 2022 of the second party to the show cause notice) wherein the second party unambiguously admitted that he has regularised his attendance without informing the Branch Manager, therefore holding of a regular inquiry against the second party would be an empty formality. In this context, it may be useful to refer a judgment of the Hon'ble Apex Court in the case of *Central Bank* of *India Ltd. Vrs. Karunamoy Banerjee [AIR 1968 SC 266]* wherein the Hon'ble Court has been pleaded to held that "If the allegations are denied by the workman, the burden of proving the truth of those allegations will be on the management; and the witnesses called by the management must be allowed to be cross-examined by the workman and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But if the workman admits his guilt, to insist upon the management to let in evidence about the allegations will be an empty formality."

In the present case the second party in his. written explanations had admitted the charges and therefore there was no molation of natural justice. Further, on being asked

the second party during his cross-examination stated to have given such reply as per the direction of the BM. But in the next breath, he contended that he has neither mentioned in his claim statement nor in his reply dated the 15th January 2022 that he had regularised his attendance in the biometric system as per the direction of the BM. So, the above plea of the second party that he has given his reply as per the direction of the BM is an afterthought plea and cannot be taken into consideration. However, it is apposite to mention here that the managements have committed a gross irregularity before dismissing the second party from his service. as a measure of punishment by not issuing the second party a second show cause notice proposing the action to be taken against him to have his say/reply on it. The expression "reasonable opportunity to show cause" means an opportunity at a stage to represent to the authority against the tentative findings both with regard to the guilt and the proposed punishment. Therefore, the employee should have an effective opportunity to show cause against the finding of guilt and the punishment proposed and he should be furnished with a copy of the findings of the inquiring authority which is obligatory. Admittedly, dismissal of any employee is a major punishment. But, the managements have not filed any rule/order basing upon which they have taken such major punishment against the second party for his above such act. On the face of above, this Court is of the consistent opinion that the action of the managements in dismissing the secondparty from service is illegal. At this stage, it is apt to mention here that the Hon'ble Apex Court in the case of Workmen of Firestone Tyre and Rubber Co. V. Management, [1973] 1 SCC 813 : 1973 ILLJ 278 have been pleased to observe that after the introduction of Section 11-A of the Industrial Disputes Act with effect from the 15th December 1971, the Labour Court has the power of an Appellate Court and it can also re-appreciate the evidence and come to a different conclusion if the situation so warrants. It has been also oserved as follows :—

"The Act is a *beneficial piece of legislation enacted in the interest* of *employees. it is well settled that in construing the provisions* of a *welfare legislation, courts should adopt, what is described as* a *beneficent rule* of *construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object* of *the Act and is more, beneficial to the employees has to be preferred. The interpretation must be liberal enough to achieve the legislative purpose. It must still be in accordance with the plain words,* of *the statute or the section and must not do violence to the language used by the legislature. it will further have to be found from the words* of *the section whether it has altered the entire law* as *laid down in the existing decisions and, if so, whether there is* a *clear expression* of *that intention in the language* of *the section.*

Both in respect of *cases where* a *domestic enquiry has been held* as *also in cases when the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under* Section 11 A*, about the guilt or otherwise* of *the workmen concerned is that* of *the Tribunal. It has to consider the evidence and come to* a *conclusion one way or other. Even in cases where an enquiry has been held by an employer and* a *finding* of *misconduct arrived at, the Tribunal can now differ from that finding in* a *proper case and hold that no misconduct is proved".*

So, in view of the above observation of the Hon'ble Apex Court, this Court in exercise of its power under Section-11 A of the ID Act while setting aside the punishment of dismissal of service of the second party thinks it proper to modify the punishment to "termination of service of second party without casting any stigma to his future service career" treating it as a case of Termination *Simplicitor.*

9. *Issue No. (iii)*—In view of the above findings, the next question that arises for determination as to what relief the workman is entitled to. At this stage, it is felt proper to rely upon the decision of

Hon'ble Apex Court in the case of *Jagbir Singh Vrs. Haryana State Agriculture Marketing Board and another, in Civil Appeal No.4334* of *2009 (Arising out* of *SLP No.987/ 2009), reported in 2009* (4) *LLJ 336 SC1* wherein the Hon'ble Court have been pleased to held that "if the termination of an employee is found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. But, compensation instead of reinstatement has been held to meet the ends of justice in appropriate cases"

As discussed above the second party was under employment for the period from 20st September 2020 to 22nd March 2023. The second party in his statement of claim stated that his last wage was fixed @ Rs.17,000 per month and such contention of the second party remained un-assailed during his cross-examination. However, WM No. 2 during his cross-examination submitted that the second party was getting wages approximately in between Rs. 25,000 to Rs. 30,000 per month depending his performance. So, keeping in view the principle laid down in the above case by the Hon'ble Apex Court, this Court taking into consideration the admission of the second party as discussed above and as the managements have lost its confidence on the second party as evident from Ext. F directs the managements to pay the second party workman a compensation of Rs. 50,000 (Rupees Fifty Thousand) in lieu of his reinstatement and back wages within a period of two months of the date of publication of this 'Award' in the official gazette, failing which the amount of compensation would carry a simple interest @ 6% per annum till its realisation.

The application is disposed of accordingly.

Dictated and corrected by me.

APARNA MOHAPATRA
29-06-2024
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
29-06-2024
Presiding Officer
Labour Court, Bhubaneswar

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By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government

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